

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

STATE OF FLORIDA, et al.)	
)	
<i>Plaintiffs-Appellants,</i>)	
)	
v.)	No. 24-12217-FF
)	
CENTERS FOR MEDICARE AND)	
MEDICAID SERVICES, et al.,)	
)	
<i>Defendants-Appellees.</i>)	

**JOINT MOTION TO DISMISS THE APPEAL
AND VACATE THE DECISION BELOW**

Pursuant to Federal Rule of Appellate Procedure 42(b)(2), Appellants State of Florida and Florida Agency for Health Care Administration (collectively, “Florida”), and Appellees Centers for Medicare and Medicaid Services (“CMS”), Administrator for CMS, Department of Health and Human Services (“HHS”), and Secretary of Health and Human Services move to dismiss this appeal and vacate the decision below under *United States v. Munsingwear*, 340 U.S. 36, 39–40 (1950).

On February 1, 2024, Florida sued Appellees to enjoin and vacate a CMS Frequently Asked Questions (“FAQ”) document that purported to interpret section 5112 of the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, § 5112, 136 Stat. 4459, 5940 (2022). Florida argued that the FAQs imposed

new obligations on the administration of its Children’s Health Insurance Program, and amended existing HHS regulations, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C), (D). On May 31, 2024, the district court dismissed the case after concluding review provisions of the Social Security Act impliedly precluded its jurisdiction under *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994).

Florida timely appealed. On September 18, 2024, Florida filed its opening brief in this Court. On November 25, 2024, Appellees filed their response brief, arguing in part that HHS was about to finalize a new rule that “supersedes the FAQs” at issue in this case. Gov.Resp.Br.16. HHS finalized that rule on November 27, 2024. *See* Medicaid and CHIP Continuous Eligibility, 89 Fed. Reg. 93912, 94463–67.

Because Appellees represent that the new rule supersedes the FAQs at issue in this case, the parties jointly move this Court to dismiss this appeal and vacate the decision below without awarding costs to either side. *See Munsingwear*, 340 U.S. at 39–40; *Coal. for the Abolition of Marijuana Prohibition v. City of Atlanta*, 219 F.3d 1301, 1309–10 (11th Cir. 2000).

Dated: December 13, 2024

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(7) because it contains 306 words. This motion complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5)–(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Calisto MT and 14-point font.

Dated: December 13, 2024

/s/ Jared M. Kelson
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*Counsel for Florida Agency for
Health Care Administration*

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2024, I electronically filed the foregoing document with the Clerk of this Court by using the CM/ECF system, which will serve all parties automatically.

Dated: December 13, 2024

/s/ Jared M. Kelson

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U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT (CIP)

State of Florida _____ vs. _____ Centers for Medicare and
Medicaid Services _____ Appeal No. 24-12217

11th Cir. R. 26.1-1(a) requires the appellant or petitioner to file a Certificate of Interested Persons and Corporate Disclosure Statement (CIP) with this court within 14 days after the date the case or appeal is docketed in this court, and to include a CIP within every motion, petition, brief, answer, response, and reply filed. Also, all appellees, intervenors, respondents, and all other parties to the case or appeal must file a CIP within 28 days after the date the case or appeal is docketed in this court. **You may use this form to fulfill these requirements.** In alphabetical order, with one name per line, please list all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party. *(Please type or print legibly):*

Bagenstos, Samuel R.

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No publicly traded company or corporation has an interest in the outcome of the case or appeal.